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11 **UNITED STATES DISTRICT COURT**

12 **DISTRICT OF NEVADA**

13
14) CASE NO.: 2:20-cv-00553-GMN-DJA
15)
16) CLASS ACTION
17) **STIPULATION AND ~~PROPOSED~~**
18) **ORDER ON ELECTRONICALLY**
19) **STORED INFORMATION**
20)

21 **1. PURPOSE**

22 This E-Discovery Protocol (the “Protocol”) will govern discovery of electronically
23 stored information (“ESI”) in this case as a supplement to the Federal Rules of Civil Procedure
24 and any other applicable orders and rules.

25 **2. COOPERATION**

26 Defendants Paysign Inc. (“Paysign”), Mark R. Newcomer (“Newcomer”), and Mark
27 Attinger (with Newcomer the “Individual Defendants,” and with Paysign and Newcomer, the
28 “Defendants”) and Lead Plaintiffs Johann Francisconi and Raheel Shahzad (“Lead Plaintiffs,”

1 and collectively, with Defendants, the “Parties”) are aware of the importance the Court places
2 on cooperation and commit to cooperate in good faith throughout the matter. The Parties will
3 endeavor to produce documents in a reasonably timely manner and in accordance with the
4 timelines set forth in the Federal Rules of Civil Procedure. The Parties recognize, however, that
5 strict adherence to those requirements may not be possible in all situations and with all data. If
6 strict adherence is not possible, the Parties will meet and confer to determine alternatives before
7 they seek relief from the Court. Production is anticipated to be conducted on a rolling basis
8 with Parties making reasonable efforts to expedite the process. If either Party feels production
9 has been unreasonably delayed, the Parties agree to confer via telephone or in person to reach a
10 mutually agreeable consensus prior to court involvement.

11 **3. PRESERVATION**

12 The Parties have discussed their preservation obligations and needs and agree that
13 preservation of potentially relevant ESI will be reasonable and proportionate.

14 **4. SEARCH**

15 The Parties agree that they will meet and confer about methods to search ESI in order to
16 identify ESI that is subject to production in discovery and filter out ESI that is not subject to
17 discovery. Where the Parties agree that potentially responsive ESI shall be searched through
18 the use of search terms, the Parties shall meet and confer to provide reasonable assurances to
19 the Requesting Party that the Producing Party’s search terms and methodology used to apply
20 them are reasonably calculated to identify responsive documents and ESI. This process may
21 include statistical sampling of disputed terms. To the extent the Parties have a dispute that
22 cannot be resolved by agreement regarding the modification or omission of search terms, the
23 Parties shall submit the dispute to the Court with a discussion of the relevance, burden, or any
24 other issues associated with the terms in dispute. The Parties may, if necessary, apply to the
25 Court for assistance in resolving any disputes regarding the need for additional search terms.

26 **5. METADATA**

27 Absent a showing of good cause, general ESI production requests under Federal Rules
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of Civil Procedure 34 and 45, or compliance with a mandatory disclosure requirement of this Court, shall include the following metadata: BEG_BATES, END_BATES, BEG_ATTACH, END_ATTACH, CUSTODIAN, ALLCUSTODIAN, AUTHOR, EMAIL SUBJECT, FROM, TO, CC, BCC, SENT_DATE, SENT_TIME, RECEIVED_DATE, RECEIVED_TIME, FILE_NAME, FILE_EXTENSION, CREATE_DATE, TIME_CREATED, LAST_MOD_DATE, LAST_MOD_TIME, PRODUCTION VOLUME, CONFIDENTIALITY, REDACTED, EMAIL_OUTLOOK_TYPE.

6. PRODUCTIONS

Absent agreement of the Parties, the following parameters shall apply to ESI production:

- a. **General Document Image Format.** Each electronic document shall be produced in single-page Tagged Image File (“TIFF”) black and white images. The Producing Party will honor reasonable requests for a color image of a document, if the original document contains color necessary to understand the meaning or content of the document. If color is required to understand the meaning or content of the document, the document can be reproduced in color on request as single-page JPG files. JPG/TIFF files shall be single page and shall be named with a unique production number followed by the appropriate file extension. Hidden content, tracked changes, edits, comments, notes, and other similar information viewable within the native file shall also be imaged so that this information is captured in the produced image file.
- b. **Load Files.** Load files shall be provided to indicate the location and unitization of the JPG/TIFF files. If a document is more than one page, the unitization of the document and any attachments and/or affixed notes shall be maintained using reasonable and proportionate efforts.
- c. **Service of Productions.** All document productions shall be served by SFTP or other similar secure electronic delivery method (e.g., Accellion / Kiteworks). Document productions served on the Parties will not be provided on secure physical media (e.g., CD, DVD, flash drive, or hard drive) unless electronic service

1 is not feasible, in which case the Producing Party will work with the Receiving
2 Party in good faith to determine the best method of service. The Producing Party
3 shall encrypt the production data, and the Producing Party shall forward the
4 password to decrypt the production data separately from the Production Media to
5 which the production data is saved. A cover letter disclosing the Bates range(s) of
6 documents being produced shall accompany the production and shall be
7 transmitted via electronic mail at the time the production is served. Productions
8 containing confidential material of any party or third party shall be password
9 protected. ESI productions shall be subject to the terms of the Stipulated Protective
10 Order agreed upon by the Parties, and entered by the Court, as well as Federal Rule
11 of Civil Procedure 26(b)(5)(B).

- 12 d. **Text-Searchable Documents.** Each party shall make its production text-
13 searchable, except that the Parties agree to meet and confer in good faith for any
14 instances where the utility of making documents text-searchable is outweighed by
15 the expense. Each individual document that is imaged from a native electronic file
16 should be accompanied by a corresponding text file containing the extracted text
17 from that document.
- 18 e. **Footer.** Each document image shall contain a footer with a sequentially ascending
19 production number.
- 20 f. **Native Files.** Responsive unredacted Microsoft Excel and other spreadsheet files,
21 Microsoft Access and other personal (non-enterprise) database files, video and
22 audio files, PowerPoint and other presentation files, or animation files shall be
23 produced in Native Format. If a document is produced in Native Format, a single-
24 page Bates stamped image slip sheet stating the document has been produced in
25 Native Format should be provided, with the exception of PowerPoint and other
26 presentations, which shall be produced in TIFF format as well as natively. For all
27 other documents, a party that receives a document produced in a format specified
28 above (i.e. JPG/TIFF) may make a reasonable request to receive the document in

1 its Native Format, and upon receipt of such a request, the Producing Party shall
2 produce the document in its Native Format.

3 g. **Translations.** No Party has an obligation to translate its foreign-language
4 documents into English.

5 h. **Review Methodology.** The Parties agree to cooperate on the use of any
6 technology-assisted review (“TAR”). A producing party that elects to use TAR
7 will disclose that it elects to do so, along with the name of the TAR software and
8 vendor.

9 i. **Attachments.** The Parties agree that if any part of an e-mail or its attachments is
10 responsive, the entire e-mail and attachments will be produced, except any
11 attachments that must be withheld or redacted on the basis of privilege. The Parties
12 will produce slip sheets in place of documents withheld on the basis of privilege if
13 any other member of their document family is produced. The attachments will be
14 produced sequentially after the parent e-mail.

15 j. **Compressed File Types.** Compressed file types (*e.g.*, .ZIP, .RAR, .CAB, .Z)
16 should be decompressed so that the lowest level document or file is extracted.

17 k. **Redactions.** The Parties agree that, where ESI items need to be redacted, they shall
18 be produced in TIFF format with each redaction clearly indicated. Any metadata
19 fields reasonably available and unnecessary to protect the privilege protected by
20 the redaction shall be provided. The Parties understand that for certain MS Excel
21 documents or other file types or files, TIFF redactions may be impracticable.
22 These documents may be redacted in native format so long as the original
23 document is also preserved in an unredacted form.

24 l. **Structured Data.** If discoverable data from any structured data system can be
25 produced in an already existing and reasonably available report, the Producing
26 Party should collect and produce the data in that report format. If an existing report
27 form is not reasonably available, the Producing Party should make reasonable
28 efforts to export from the structured data system discoverable information in a

1 format compatible with Microsoft Excel and may produce such information in that
2 native format.

3 m. **Paper Documents.** In scanning paper documents, distinct documents should not
4 be merged into a single record, and single documents should not be split into
5 multiple records (i.e., paper documents should be logically unitized). In the case
6 of an organized compilation of separate documents – for example, a binder
7 containing several separate documents behind numbered tabs – the document
8 behind each tab should be scanned separately, but the relationship among the
9 documents in the compilation should be reflected in the proper coding of the
10 beginning and ending document and attachment fields. The Parties will make their
11 best efforts to unitize the documents correctly.

12 n. **Inclusive Email Production.** The Parties shall produce e-mail attachments
13 sequentially after the parent e-mail. With respect to an e-mail chain, the Parties
14 are permitted to produce the longest unique or inclusive chain and the Parties do
15 not need to separately produce the lesser-included e-mails unless those lesser-
16 included e-mails include unique attachments not included in the longest chain or
17 contain a BCC recipient not shown in the longest unique chain. If a lesser-included
18 e-mail includes a unique attachment, then the lesser-included e-mail must be
19 separately produced with the attachment. If an email thread splits into two separate
20 threads, then both threads shall be included in the production.

21 o. **De-Duplication.** A Party is only required to produce a single copy of a responsive
22 document. To the extent identical copies of documents appear in the files of a
23 Custodian, the Producing Party shall attempt to produce only one such identical
24 copy across all Custodians based on MD5 or SHA-1 hash values at the document
25 level for file system data or the email family level for emails (except for Paper
26 Discovery). Custodian metadata for a given document shall reflect any Custodian
27 of any document removed as a duplicate of that document.

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1 p. **De-NISTing.** System and program files, including those as defined by the NIST
2 library (<http://www.nsrl.nist.gov/>), commonly used by e-discovery vendors to
3 exclude system and program files from document review and production, need not
4 be processed, reviewed, or produced, unless a Party reasonably determines such
5 files are relevant to the litigation.

6 q. **Not Reasonably Accessible ESI.** The circumstances of this case do not warrant
7 the collection, review, or production of ESI that is not reasonably accessible if, and
8 only to the extent that, the Party in possession of that ESI (1) has complied with
9 the obligations set forth in this order, and (2) believes in good faith that ESI is
10 unlikely to contain relevant information not otherwise available in reasonably
11 accessible sources. For purposes of this paragraph, the below sources of ESI are
12 not reasonably accessible. In the event that either Party contends that ESI from
13 any of these sources may be relevant to this action and not otherwise available
14 from reasonably available sources, the parties shall meet and confer in good faith
15 to determine if they can agree to produce such ESI, and if they cannot, shall submit
16 the dispute to the Court.

- 17 i. Random access memory (RAM) or other ephemeral data, including
18 residual, deleted, fragmented, damaged, or temporary data;
- 19 ii. Online access data such as temporary internet files, history, cache,
20 cookies, etc.;
- 21 iii. Data in metadata fields that are frequently updated automatically, such as
22 last-opened dates (as distinguished from the metadata the parties agree to
23 include in the ESI production as set forth in paragraph 8(k), below);
24 Backup tapes and systems created for the sole purpose of disaster
25 recovery;
- 26 iv. Legacy data;
- 27 v. Encrypted data/password protected files, where the key or password
28 cannot be ascertained absent extraordinary efforts;

1 vi. Backup data that is substantially duplicative of data that is more
2 accessible elsewhere; and

3 vii. Server, system, or network logs.

4 r. **Limits of Order.** Nothing herein shall preclude any Party from seeking to amend
5 this order by agreement or Court order; provided, however, that no Party may seek
6 relief from the Court concerning compliance with the order until it has met and
7 conferred in good faith with any Parties involved in the dispute. Nothing herein
8 shall be construed as a representation that a party is in possession, custody or
9 control of any certain type of documents or ESI, or expands any Party's discovery
10 obligations as provided for in the Federal Rules of Civil Procedure. Further,
11 nothing herein shall alter or limit rights provided by the Federal Rules of Civil
12 Procedure or otherwise to object to or seek to limit any discovery, including but
13 not limited to the right to object to discovery that imposes an undue burden on a
14 party or to seek to shift or impose costs on the Requesting Party for any such
15 discovery. In addition, nothing in this order shall be deemed to prevent a Party
16 from seeking the Court's intervention with respect to issues that may arise
17 regarding the application of this order to a document request issued to a Producing
18 Party and/or any objections that the Producing Party may have if the Parties are
19 unable to resolve any such issues or objections without the Court's assistance.
20 Likewise, nothing in this order shall be deemed to prevent any other Party from
21 opposing relief sought from the Court.

22 s. **Authenticity and Admissibility.** Nothing herein shall be construed to affect the
23 authenticity or admissibility of any document or ESI. All objections to the
24 authenticity or admissibility of any document or ESI are preserved and may be
25 asserted at any time.

26 t. **Mobile and Personal Devices.** The Parties are meeting and conferring about
27 whether they shall search the personal devices, including but not limited to cellular
28 phones, smart phones, iPads, tablets, computers, and/or drives. To the extent the

Parties cannot reach an agreement on personal devices, they shall submit the dispute to the Court with a discussion of the relevance, burden, or any other issues associated with the devices in dispute.

- u. **Destruction and Return of ESI.** Within sixty (60) days after dismissal or entry of final judgment not subject to further appeal, all discovery materials produced must be either destroyed or returned to the Producing Party. If destroyed, the Requesting Party must inform the Producing Party that the materials have been destroyed no later than 60 days after dismissal or entry of final judgment not subject to further appeal.

7. DOCUMENTS PROTECTED FROM DISCOVERY

Fed. R. Evid. 502(b) shall apply to the inadvertent production of a privileged or work-product-protected document.

Dated: October 19, 2023

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11 *Class*

12 **ORDER**

13 IT IS SO ORDERED that the parties' stipulation on electronically stored
14 information (ECF No. 59) is GRANTED.

15 DATED: 10/20/2023

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17 DANIEL J. ALBREGTS
18 UNITED STATES MAGISTRATE JUDGE
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